

# Reforming Turkey's Democracy

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**ABSTRACT** *The constitutional amendments approved by the referendum of April 16, 2017 are not only a positive step toward renewal of Turkish law and the structure of its election system, but also a step that initiates reform in all dimensions of Turkey's political system. This commentary argues that Turkey's transition to a presidential system marks the beginning of a reform process that will strengthen the relationship between the public and the government and will result in the transition of Turkey towards a full democracy. Accordingly, it analyzes some of the main changes that can be expected in the post referendum period.*

## Introduction

**T**he date April 16, 2017 points to a new phase in Turkey's battle to become a full democracy. This new period can be defined as the last phase in the complete dissolution of the fascistic-institutional dominance that had acted as a determinant at several levels of Turkish political life since the proclamation of the Republic. The constitutional amendments approved by the referendum of April 16, 2017 are not only a positive step toward renewal of Turkish law and the structure of its election system, but also a step that initiates reform in all dimensions of Turkey's political system.

The constitutional amendments approved on April 16, 2017 mark the nineteenth amendment to the 1982 Constitution. The previous eighteen amendments had consisted of intra-system revisions and, in a sense, they were amendments undertaken to modify and fix the apparatus built by the 1982 Constitution. In these revisions, regardless of their depth and scope, the basic foundation of the previous system was structurally preserved. The Constitutional amendments of April 16, however, enable system reform by restructuring the state apparatus into a Presidential system. In this sense, the constitutional amendments of April 16 can be regarded as the first reform

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step in transforming the political system built in the 1982 Constitution. It should be mentioned that the intra-system revisions executed up until April 16 paved the way for the system reform. Therefore, it would not be wise to trivialize or downplay the previous amendments to the system. With that said, it should be kept in mind that the constitutional amendments of April 16 are only the beginning of a series of reforms.

The basic reason why the constitutional amendments of April 16 are only the beginning of a series of reforms yet to come is simply the fact that this amendment doesn't yet fully meet Turkey's constitutional system needs. The first reform process that has started with the decision to change to a presidential system of government is a process that must be linked to new reforms phases coordinated with the other dimensions of the new constitutional system. It is necessary to first follow through on the legal arrangements stipulated in the constitutional amendments regarding the functions of principal governmental organs via the presidential system of government and to engage the system. In this context, political and technical regulations and executive decree regulations are of crucial importance. By all means, executive regulations that will be conducted via presidential decrees will only be possible when the new state model comes into play. Adjustment laws should be defined before the new government model is implemented. Moreover, adjustment laws will allow the steps to be taken that will embody and provide con-

tent for the first reform process in the eyes of the law. When the presidential government model comes into force with the first general election, and the regulations related to government are undertaken with the help of decrees, the other dimensions of the constitutional system will inevitably come to the fore. At this point, the system will be mature and functional enough to allow for discussion about issues such as how the second reform process will start and continue. The main issue to acknowledge in the interim is the fact that Turkey has been engaged in a reform process which has entered a new, intensive phase with the passing of the most recent constitutional amendments.

The constitutional amendments of April 2017, which have major significance, need to be analyzed from various dimensions. It is worth taking time to understand what these amendments mean, and what their repercussions entail. This compact study will address the amendments in terms of their timing, political law approach, democracy criteria, and content. The last section will briefly evaluate the issues of legitimacy, consensus, diversity and oneness.

### **The Timing of the Amendments: Turkey's Historical and Contemporary Needs**

The objective conditions that bring the constitutional amendments of April 16 to light have determined the timing for the amendment as well. These conditions consist of four main

factors: (1) The need to dissolve the anti-democratic governmental structure formed particularly after the 1961 Constitution, and (re)produced by internal powers that are closed, bureaucratic, detached from the public and vulnerable to being occupied by movements via filling state cadres, (2) The new phase in Turkey's struggle for democracy between bureaucratic institutional dominance and national sovereignty after the National Revolution of July 15-16, 2016 and the ensuing task of restructuring the government in a democratic manner, (3) The initiation of the constitutional amendment process by the actors that take responsibility for executing the process of political amendments that matured after the National Revolution of July 15-16, (4) Finally, the possibilities of change for Turkey in terms of meeting the new democracy and political system needs of the 21<sup>st</sup> century.

### **The Political Law Approach of the Constitutional Amendments**

On April 16, 2017, for the first time in Turkish history, steps have been taken with the constitutional amendments for the transition from a designative and oppressive law approach to a facilitative and conducive approach in terms of the law of the political system. In this sense, implementing a completion election, a relative concurrent election and a renewal election introduce systemic features that strengthen the public's options to directly elect the parliament and the government. In jurisdiction, the

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link between the will of the nation, by way of the representatives elected by the public, will strengthen democratic politics and improve accountability mechanisms. The fact that the government will be elected with a minimum fifty percent plus one vote and via indirect election is a systemic assurance that empowers the public and safeguards pluralism. Moreover, since this opportunity ensures that the public will not solely depend on political party candidates, it has the power to unearth options outside of political parties in terms of claims to governmental roles.

Clearly, what is being discussed here is a systemic change that has been developed with a political law approach that empowers the public and facilitates democratic politics. A significant outcome of this amendment involves juridical legitimacy. Now, the production of law will not be based on the will of the elite but instead it will be based on the demands and needs of the public.



Banners picturing Prime Minister Binali Yıldırım (R) and Devlet Bahçeli (L), the leader of the Nationalist Movement Party, call the Turkish people to vote "Yes" in the April 16 referendum. March 24, 2017.

AFP PHOTO / ADEM ALTAN

## April 2017 Constitutional Amendments and the Criteria of Democracy

For a state to be regarded as democratic there should be congruity with four principles involving the establishment, renewal, and functional principles of democracy. Namely, these principles are: the principle of legitimacy, the principle of solution, the principle of change, and the principle of separation of powers.

*Principle of Legitimacy:* With the constitutional amendments of April 16, a major step has been taken to be a democratic state by fully solving the problem of democratic legitimacy in the establishment, renewal, and functions of governmental organs. That sovereignty now belongs to the public, and the republic is defined as a democratic state, mark the last stages

of the establishment process for Turkey. The constitutional amendments of April 16 facilitate the transition to these reformist phases and initiate the process of reforms that fully establish the legitimacy of Turkish democracy.

*Principle of Solution:* This principle defines how problems are solved and how blockages are surpassed in political systems. With respect to the principle of solution in democracies, problems are solved through democratic processes through the legitimate organs of the state. The solution to objective or subjective problems in Turkish political history between 1946 (the date of transition to a multi-party system) and July 15, 2016 were provided not by legitimate will and governmental organs but by illegitimate interventions. The constitutional amendments of April 16 provide a political transforma-

tion that will remove this problem in Turkey. When the presidential system comes into effect, any problems that may occur in the political arena, or any inconsistencies between the parliament and the government, will be primarily solved with the help of democratic politics. At times when Turkey's elected officials, working through the legitimate channels of the government organs, are incapable of solving problems, the choice of the public will be sought through referenda. As it can be seen, the fundamental will of the Turkish public, and their representatives as the democratically elected, are brought to positions as the legitimate actors in determining solutions for Turkey's political problems.

*Principle of Change:* The constitutional amendments of April 16 signify democratic gains for the Turkish public. Indeed, the presidential system of government is not a model that is preferred by political actors, but a model that reflects democratic gains for the people; it is a model chosen by the public. The presidential model of government was brought to Turkey's agenda via constitutional amendments prepared in line with the principle of change in democracies, with the aim of safeguarding the democratic gains of the Turkish people. These amendments, which were approved by referendum, signal a transformation that is consistent with the democratic gains of the public.

*Principle of Separation of Powers:* In its simplest definition, separation of powers differentiates and limits the

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governments' powers, and is indicated by a structure of independence and non-interference between the executive, judicial, and legislative branches of government. Legislation has the monopoly of lawmaking and does not interfere with executive power. Executive power is engaged with governmental activities and does not interfere with legislation processes. Jurisdiction monitors the functions of the parliament and the executive power in terms of compliance with laws and constitution, but does not replace the parliament or government.

A new model that clearly delineates the separation of powers has been established with the constitutional amendments of April 16. The executive branch has been completely removed from the parliament, and all authority of the executive branch in terms of lawmaking has been abolished. The democratic legitimacy problem of jurisdictional administration has been solved, the impartiality principle, which has been constitutionally decreed has been strengthened, and conditions for judicial ac-

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tivities that are in line with the principle of non-interference have been prepared.

### **The Scope of the Constitutional Amendments**

The constitutional amendments of April 16, 2107 include both provisions related to the governmental model, and decrees that strengthen rights.

#### ***Legislation that Strengthens Rights***

A significant dimension of the amendments involves strengthening representational justice, making a transition to jurisdiction by the public, strengthening democratic will, and paving the way for public initiatives.

*Strengthening Representational Justice:* Representation in democracies is not only related to representation of the electorate. Equilibrium between the number of voters and rep-

resentatives, the representation of social sects, geographical units, occupational groups, and various identity groups, and representation of all types of democratic political tendencies –even minimally– are the elements of democratic representation. In this context, increasing the number of members of parliament and lowering the age for voting from 25 to 18 are steps that strengthen justice in representation.

*Transition to Jurisdiction by the Public:* In democratic systems based on the principle of national sovereignty, jurisdiction proceeds for the people as a function of national sovereignty. The jurisdiction needs to be the democratic judiciary for the people, so being independent and neutral, behaving in line with the fair trial principle, following the natural judge principle and the union of the judiciary are basic conditions. Also, in legal decisions or personal conviction, the conviction should represent public conscience. It means that the monopoly of conscience does not reside with the judges. Hence, a construct that will make public conscience effective is a must in judicial processes. Steps in this direction are significant in the constitutional amendments of April 16.

*Strengthening Democratic Will:* A major step has been taken with the constitutional amendments of April 16 to deter putschist tendencies and to generate a systematic law to activate effective precautions when these tendencies occur. Abolishing martial law, normalizing the status of the

Chief of the General Staff, enabling the democratic will to decide about the activation of the military during ordinary periods, as well as states of emergency, and abolishing the privileged military court mechanisms are significant changes in this regard.

These amendments strengthen the elected democratic will in terms of civil-military relationships. In addition to modifying the constitutional framework, the other steps which were taken after July 15 with regard to juridical legislation and strengthening the democratic will involve: i) affiliating the Service Commands to the Ministry of Defense in administrative aspects, ii) affiliating the General Commandership of Gendarmerie and Coast Guard Command to the Ministry of Interior, founding the national Defense University, iii) affiliating military academies and military vocational colleges with this university, and abolishing military high schools.

*Paving the Way for Public Initiatives:* The right of the public to directly nominate individuals for government positions is an advanced move that paves the way for public initiatives. The right of a hundred thousand electorates to nominate the president is a significant expansion of scope in terms of public participation in democratic politics. By using this opportunity, the public will be able to generate new options without having to conform to the options presented to them by political parties. Political parties that acknowledge the public's ability to exercise this potential

will search for the most inclusive and reasonable candidates. In addition, paving the way for the public to nominate individuals for the government will undoubtedly bring other public initiatives to the fore.

### ***Regulations between the New Government Model and State Organs***

These amendments consist of constituent, authorizer, restrictive, supervisory, balancing, preventive and advisory regulations. The relationships among basic governmental organs are redesigned to a certain degree through this governmental model.

### ***The People's Parliament and Forming the Government Directly***

Through direct elections, the public will form both the executive branch and the parliament. Two separate ballot boxes will increase the public's options and expand the freedom of selection. The public will not be burdened anymore with selecting a parliament with suitable members and a stable administration with only one ballot in general elections.

### ***Establishment of the Parliament and the Government***

The periods for office are separate for the parliament and the executive branch in presidential systems of government. The public forms the parliament and elects the president every five years via elections. As distinct from the parliamentary model, the obligation to form a government from the parliament has been abolished. The public will form the government directly with their votes. Concurrence in elections and fixed

office periods are regulations to ensure stable administrations. However, “relative concurrent election” in the place of concurrence and “flexible fixed period” in guaranteed fixed office periods are preferred to provide dynamism to the system.

The regulation that each president can only have two terms of presidency in total during ordinary times, i.e. limiting the period of presidential power, provides a significant opportunity for the renewal of politics. As mentioned above, the formation of the parliament and the government is based on the principle of democratic legitimacy.

One concern is that the two separate ballot boxes may result in divided administrations. While tackling this issue, the legitimacy of different preferences made by the public should not be questioned. The outcome is legitimate even if the public selects both the parliament and the government from the same or different political channels. It is necessary to understand the task given to politics by the public by making different choices. If the public forms the parliament and the government from different channels, it should be necessary to understand that the public wants to balance these channels and to generate reasonable cooperation and handle tasks by looking after each other.

### ***Characteristics of the Government***

The Presidential system of government is a single-person government in political terms because when

one of the presidential candidates is elected in the first or second round, the government is formed in political and legal terms. The individual who has taken political responsibility is the one who has been elected by the public. It is the presidential candidate with the political program and the president after the election. Political responsibility towards the public rests with the elected president. However, the presidential government is a team in technical terms. The president may assign one or more vice presidents after elections in line with the needs of the government program. The elected president forms the political government whereas the team composed of vice presidents and the ministers is the “technical government.”<sup>1</sup>

Due to this characteristic of the presidential government system, political decisions can only be made by the elected president. Of course the president may consult with his or her team, or with other experts while making political decisions. However, in terms of the system, the president has the sole authority to make political decisions. The “technical government” composed of vice presidents and ministers has no political responsibility; it only has legal responsibility in the framework of its connection to president. The team also has legal and criminal liability in general. The “technical government” has no authority to make political decisions; it only has the obligation to enforce decisions made by the political government. Hence, the authority of the “technical government” is



limited to making decisions related to enforcement.

Since the establishment of the “technical government” is not dependent on the parliament, it can be expected that the team may have technocrat capabilities. In the presidential model of government, the members of parliament who accept the role of vice presidency or minister will no longer be members of parliament. If their positions in the executive branch end, they can no longer return to being members of parliament. Hence, although it is legal, the possibility of members of parliament becoming vice presidents or ministers is rather slim. It is projected that all members of the technical government will be outside the parliament, with very few exceptions.

The relationship between political will and bureaucracy normalizes in the presidential government model. Indeed, by giving the sole authority to the president in the assignment and removal of high level administrators, and removing the obstacle of having three signatories for decrees will result in harmonizing democratic politics with time management since the time management of bureaucracy will be connected to the elected will, practices of independent ministries will be abolished with the help of “technical government model,” the ability of ministries and related bureaucracy to act together will increase, and speed, productivity and efficiency will improve in government practices. Also, the fact that individuals who will be assigned in the technical government

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will have no political profiles and will be freed from pressures such as polling districts and constituents will increase the opportunities to distribute services objectively and fairly.

It has not been preferred in the presidential system of government to consider the vice president who deputizes president as elected. Being considered as elected is related to taking the place of the president in case the post is vacated, taking the presidential oath and having the authority to complete the remaining time in presidential office. The U.S. system prefers this designation and their system requires the legitimacy of being regarded or designated as elected. However, according to the April 16 constitutional amendment, when the presidential post is vacated, the proxy vice president has no authority to stand in for the president or take the presidential oath and complete the remaining time in the office. He or she has the obligation to remain in office for 45 days to execute routine government business; hence, *charge d'affaires*, or with its new term “proxy/stand-in government” is in question.

**Parliament's monopoly over legislation is the most effective manner of supervising the government. The parliament can always determine the framework of government activities via laws, or annul presidential decrees with the laws it legislates**

Proxy government is also valid when the president is abroad or temporarily out of office due to illness.

#### ***Presidential Decrees – Limited Authority to Issue Decrees***

The decree system in Turkey's presidential model of government will consist of a limited decree arrangement. Both the judiciary and the parliament have supervision over decrees. Although different classifications are possible, three types of decrees can be cited based on their fields. The first are regulatory decrees related to the legislative field, the second are regulatory decrees related to the executive field, and the third involve individual and singular operations.

If a decree is approved for the legislative field, the first or second political party with parliamentary groups can appeal to the Constitutional Court with the claim that the decree is against the constitution, which will lead to a review of forms. Also, when a decree comes into force without the

review of the Constitutional Court, any court can appeal to the Constitutional Court by way of concrete norm control. Decrees related to the executive field are subject to the supervision of the Council of State. According to the Constitution and Code of Administrative Procedure, anyone with legal connections can appeal to the Council of State and has the right to file an annulment action. Again, when the practice of this decree comes into question in any court, an annulment of the decree can be required in administrative procedure. In regard to individual and singular decrees, anyone whose legal interests are violated can litigate administrative jurisdiction.

First, it should be noted that ordinary decrees are below laws in terms of the hierarchy of norms. Second, no decrees can be issued in the area of rights and freedoms. Third, no decrees that are against the laws can be issued. Fourth, no decrees can be issued for fields that are regulated by laws. Fifth, no decrees can be issued for topics that are included in the approximately eighty items that are slated to be regulated by law. Sixth, the parliament can always enact a law to annul a decree. Seventh, decrees are subject to inspection by the Constitutional Court, the Council of State or administrative jurisdiction according to their types. Eighth, decrees can always be taken to the Constitutional Court by way of concrete norm control. Ninth, if the law and the provisions of a decree contradict each other, the law is applied. Lastly, the issues about which the president

can exclusively issue decrees are six: regulating the National Security Council, regulating the State Supervisory Council, establishing service of public legal entities, regulating ministerial organizations, regulating the principals for assigning and removing higher level administrators and determining the status of Chief of General Staff. The president has no exclusive rights to issue decrees in any other subjects.

### **Uniting the Administration of Justice with the Will of the Public**

In the current system, the administration of justice has legitimacy issues. In democratic systems, “ties need to be formed between the administration of justice and the will of the people” to ensure that legislation is based on democratic legitimacy. The amendment leaves the selection of the members of the Board of Judges and Prosecutors to the organs directly elected by the people to solve the problem of democratic legitimacy. Indirect democratic legitimacy has been ensured by having the elected select the members of the Board of Judges and Prosecutors. It should be significantly emphasized that the Board of Judges and Prosecutors is not a court, nor is it a judicial authority. It is not a board that engages in judicial activities. It is a board of administration of justice. Selecting judges and prosecutors to this board is not the same as assigning judges. The Council of Judges and Prosecutors (*Hakimler ve Savcılar Kurulu*, HSK) is only the result of the obligation to compose the majority

of the administrators from judges and prosecutors. Accordingly, a system that links the administration of justice to the will of people does not place judicial power in the control of any other power. Indeed it's just the opposite, the new system will actualize the principle of jurisdiction for the people, and establish the democratic judiciary of the people. The independence of the judiciary and judicial impartiality are not structural but functional. This means the courts are under the obligation of being independent and impartial while doing their jobs. The system has several assurances related to this. Therefore, to select members for the Board of Judges and Prosecutors through elections by the people is to ensure democratic legitimacy and political accountability. HSK has nothing to do with judicial activities.

### **Parliament's Authority to Supervise the Government**

The parliament in a presidential system has the authority to supervise the government in various aspects. The authority to launch inquiries and investigation is possible in democratic presidential systems. However, in the presidential government model, other elements that are included in the political experience of Turkey are designed as supervisory mechanisms as well.

#### **General Methods of Supervision**

Of course, parliament's monopoly over legislation is the most effective manner of supervising the govern-

President Erdoğan officially reunited with the AK Party and once again became its chairman during the 3<sup>rd</sup> Extraordinary Congress of the AK Party, held on May 21, 2017.

AA PHOTO / KAYHAN ÖZER



ment. The parliament can always determine the framework of government activities via laws, or annul presidential decrees with the laws it legislates. For example, the parliament may undertake an effective legislative supervision by refusing the Budget Act and Final Account Law proposed by the executive branch or by approving them after certain revisions. The executive branch has the authority to put the previous year's budget into effect by increasing it at the ratio of inflation, if the parliament were to refuse the budget proposal and the temporary budget; this mechanism indicates the superiority of the parliament; the government will not be able to find additional sources, even for a budget that is put into effect with only an inflation rate increase, and will not be able to make transfers between budget items. Also, the authority to establish a tempo-

rary working budget of this kind can only be used by the government once. Based on the principle of budget legality, it is necessary for the budget to be approved by the parliament. If the budget is refused again the following year by the parliament, the government cannot put the budget into effect with the same method. The expression, "budget of the previous year" included in the constitutional provision points to the budget that has been approved and put into effect by the parliament. When such a problem arises, histo-incompatibility becomes unbearable. At this point, there is a possibility to renew the elections together. Here, since the executive branch has no feasibility to prolong the budget conflict, it will have to either propose a budget that can be approved by the parliament or to support the amendments planned by the parliament.

On another note, a state of emergency may be declared by the government both in the previous model and in the new presidential model of government. However, in the previous model, the parliament only has the authority to change the duration of the state of emergency and cannot terminate a declared state of emergency. In contrast, in the new model it has the authority to terminate the state of emergency in the presidential model of government even at the moment it is declared. In the previous model, if the statutory decrees issued during the state of emergency and presented to the parliament are not discussed within a month, there are no legal consequences. In the presidential model of government, the statutory decrees issued during the state of emergency are still presented to the parliament immediately but they can be revoked after discussions; they are revoked automatically if they are not discussed within a three-month time. As can be seen, the supervisory authority of the parliament related to a state of emergency, which is at the disposal of the executive branch has been significantly increased.

In addition to these forms of supervision, parliament can supervise the government through parliamentary inquiry, general interviews, and written inquiries. A motion of censure is a supervisory mechanism needed by parliamentary government models and it is not necessary in a presidential model of government entitled “direct government of the nation” since the public gives their vote of confidence at the ballot box.

**The authority to lift the legislative immunity of the members of the technical government for crimes outside of office reinforces the supremacy of the parliament**

### ***Criminal Liability***

In a presidential model of government, the criminal liability of the president is examined through an investigation launched by the parliament. This is also a mechanism for balance and supervision. The president had no *de facto* criminal liability in the previous system. The president in the previous system could only be sent to the Supreme Court for treason and with 3/4 majority vote of the members, but could not really be accused since the criminal code does not include treason. In the presidential model of government, the president can be accused of any crime. Also, the parliament can require an investigation with an absolute majority vote and send the president to the Supreme Court with 2/3 of the votes. A president who is under investigation cannot decide to renew the elections, and, if the president is sentenced for a crime by the Supreme Court it prevents him or her from becoming president, and his or her presidency is annulled. The period for trial in the Supreme Court is three months, which may be extended to a maximum of six months with a single extension of time, when necessary.

The criminal liability of the president is greatly extended in this system. After the presidential term has ended, the same investigative procedure is valid for any crimes alleged to have taken place during the presidency. However, there are no special investigative procedures for alleged crimes outside the presidential term.

The same investigative mechanism for the president applies to alleged crimes by vice presidents and ministers while holding office. However, the status of members of the technical government are the same as members of parliament in matters related to alleged crimes other than crimes committed while holding office. This means they are subject to legislative immunity. In this case, the parliament can lift the parliamentary immunity and open the way for judiciary investigation and prosecution, or, if this does not occur, these individuals may be tried after their assignments are over.

As can be seen, the authority of the parliament over both the political government and the technical government is significant. Also, the authority to lift the legislative immunity of the members of the technical government for crimes outside of office reinforces the supremacy of the parliament.

## Regulations Related to Elections

Three different types of elections have been introduced into the system along with the establishment of a presidential model of government. Ordinary

elections that are held every five years, renewal elections that may be held in the period between two elections, and a completion election that may be held in circumstances when the post of presidency is vacated. Of course, the by-elections that already exist in the system can be used under specific conditions. For example, a special case for elections occurs when the presidential post is vacated, and when there is less than one year until the ordinary election. Under such circumstances, both the parliament and the president will be elected together. Actually, this last case can be regarded as an ordinary election scheduled for an earlier time based on the vacation of the post. Hence it is not necessary to define this election as a separate type of election. In this context, it is possible to define the elections as regular, ordinary elections and early elections.

### *Ordinary Elections*

Regular, ordinary elections are held every five years, and the parliament and the president are elected concurrently. However, the preferred model is not absolute concurrence, i.e. it is not obligatory to elect the parliament and the president on the same date. This is because the system of government election is composed of two rounds, not one. Accordingly, when the elections are held on the same day, the election of the parliament can be completed, but the election of the president may be deferred until the second round. In this case, since the executive branch will be elected in the second round, the accepted model can be defined as “relative concurrent elections.”

Early regular elections are held when the President vacates their offices and this happens when there is less than one year to the date of the regular election. In this case, both elections need to be held within 45 days after vacating. If there is less than one year at the time of vacating, and the regular elections fall within the last 45 days of this period, then ordinary elections will be held. However, if there is less than one year at the time of vacating but more than 45 days, an “early ordinary election” will be held.

The concept that brings elections to the agenda in this option is the vacation of the office by the president for any reason, when there is less than a year until regular elections. This means that there is no direct decision to renew the elections but there is an obligation to hold elections. Hence, early elections decided to renew the elections and early ordinary elections do not belong to the same category. Early ordinary elections shorten the parliamentary term as a result of a presidential vacation of office. However, early elections shorten the terms of both organs voluntarily with an open verdict from the parliament or the executive branch.

### **Renewal Elections**

First of all, it should be mentioned that taking a decision to renew elections together is not abolition. The previous system has the authority to abolish. In terms of political law, abolition is a procedure that creates *ex parte* political outcomes. Abolition does not affect the party that uses this authority. For instance, Erdoğan

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decided to renew the elections since no government could be created from the parliament formed on June 7, 2015 and parliamentary elections were held on November 1, 2015. The current presidential election was not held based on the system. In terms of political law, this is the authority to abolish if such a qualification needs to be made.

### **Completion Elections**

When the presidential office is vacated there are two options. If this event takes place when there is less than one year until ordinary elections, then both parliamentary and presidential elections are held. On the other hand, if this event takes place when there is more than a year until ordinary elections, only a presidential election is held. The election is held within 45 days from the vacation of office. In determining the one-year period, the date of vacating the office is taken as the criterion, and not the date of the elections. This means that, if there is still more than one year until ordinary elections when the office is vacated, the presidential election is held alone. The circumstance that there is less than a year until ordinary elections at this date does not influence the outcome. A president

## A president with limitations to hold office only for two terms cannot totally renew the twelve Constitutional Court members under his/her responsibility

elected in this manner completes only the remaining time. Therefore, this election is called a “completion election.” For the individual who is elected as the president with a completion election, the period that he or she completes is not considered to be his or her own term.

### Increased Power of the Parliament

The parliament attains an extremely powerful position with the practice of politics guided by the new model, and has increased supremacy over the executive branch. We cannot talk about the independent and free will of the parliament in the previous system. There, the will of the parliament was dependent on the government and its bureaucracy. This reality is valid for both one-party governments and coalition governments. The authority of the executive branch to draft and present government proposals is revoked in the presidential government system. Its authority to issue statutory decrees is also abolished with the empowering act. Other than the Budget Act and Final Account Law, the presi-

dent has no authority to propose laws. Moreover, the president will not have representation in the general council under the legislation act. Unless requested by the commission, no one from the government will be able to deliver an opinion during discussions related to a bill of law. More importantly, legislative proposals are completely in the hands of parliament members. Members of parliament will not be dependent on bureaucracy while designing drafts and will depend solely on the demands and needs of the voters. Hence, they will be empowered in this regard.

Parliamentary commissions will be empowered as well. For instance, commissions will be transformed into real commissions of deliberation, and general councils will turn into actual decision-making arenas. On the other hand, since the local will is going to be the determinant during the candidacy for membership to parliament, members of parliament will be freed from dependence on the center. If the individuals are powerful on the local scale, in their provinces, local dynamics will make them candidates even if they do not receive sufficient support from the party center. Members of parliament are thus empowered both in terms of candidacy and in their roles. They also have legislative monopoly. All of these factors will transform the relationship between the Member of Parliament (MP) and the voter into a “direct relationship.” It should be noted that when the parliament becomes freer, it will not weaken, but rather transform into an independent and strong power.



## **Time Assurance of the Constitutional System**

The time assurance of constitutional systems is based on mechanisms such as different periods of duty for the elected and the constituent specific durations of office for the elected and the impossibility of removing the elected from office by the constituent. In this way, relationships based on dependency cannot be formed between the elected and the constituent, and it can be ensured that the elected and the constituents take up their roles at different periods.

The constitutional amendments that effect the presidential model of government make no changes to the selection of Constitutional Court members and their periods of office, and since no new elections can be held after the termination of duty for two members from the High Military Administrative Court and the Military Supreme Court, which have been abolished, the number of Constitutional Court members has been decreased to fifteen. Despite this change, considering the current periods of office for the Constitutional Court members and periods of office in the new elections, it can be claimed that the current system also has a time assurance. As will be seen, a president with limitations to hold office only for two terms cannot totally renew the twelve Constitutional Court members under his/her responsibility.

The constitutional amendments that regulate the presidential government

model have restructured the Board of Judges and Prosecutors as well. The number of members has been reduced from 22 to 13. Seven of these members will be selected by the parliament, whereas four members will be selected by the president. The Minister of Justice and the undersecretary are natural members. Constitutional Court members are elected for four years, with the possibility of one additional four-year term. The periods of office for the president and the parliament are five years each under normal conditions. Hence, the parliament and the government have time assurance stemming from the difference of periods of office for Constitutional Court members. The new Constitutional Court will be established with member selection by the 26<sup>th</sup> parliament and the current president. In 2021, the president elected in 2019 and the parliament will elect the Constitutional Court members. In 2025, the president elected in 2024 and the parliament will elect the Constitutional Court members. If there is renewal or completion election in the meantime, it is possible for governments and parliaments composed of different individuals to elect Constitutional Court members.

## **Legitimacy, Consensus, Diversity and Oneness**

### ***Equilibrium in Terms of Legitimacy, Supremacy in Terms of Function***

It should be noted that democracy, which is the sum of principles related to operations of a political system, depends on the principle of legiti-

**When there is fairness in representation, the 10 percent election threshold will not be needed. In this case, the diversity of representation comes to the fore. Needs such as ensuring fairness of representation in numerical minimalism as well as representation of diversity and pluralism will be important**

macy in the formation of state organs and on principle of functionality in terms of its activities. The legitimacy of a democratic system is based on the will of people. Balance and supervision of organs are defined based on the definitions of the functions of these organs. In terms of legitimacy, a presidential system of government is based on the equality of the government and the parliament. Also, the problem of judicial legitimacy has been solved as well. In this system, the public directly forms the executive branch and the parliament with two separate elections. This means that both of these organs depend on democratic legitimacy. The administration of justice is indirectly determined by the public. In other words, the administration of justice depends on indirect democratic legitimacy.

In functional terms, the parliament is superior to the executive branch. The

parliament supervises the government through laws, parliamentary inquiries, general interviews and written questions. Also, the parliament may initiate penal supervision by launching investigations and lifting immunity. In addition, the judiciary is superior to the parliament and the president in functional terms.

### ***Numerical Consensus in Terms of Legitimacy***

The presidential system of government's approval by both the parliament and by referendum indicates its strong legitimacy in terms of political and social consensus, in addition to numerical consensus. Indeed, social reconciliation is not a generic term whose content is ambiguous. Social reconciliation over political operations cannot be regarded as agreement across the whole society for the same model. An accurate approach would be to ensure sufficient reconciliation. A base of sufficient reconciliation requires receiving pluralist support. Pluralist support does not mean 100 percent support. It means the minimum numerical support that guarantees pluralism. Accordingly, a system that brings forth the "direct government of the nation" has a unique characteristic that will guarantee democratic operations in addition to the built-in assurance mechanisms. This characteristic is the election of the president with at least a fifty percent plus one vote. Considering the diversity of sociology in Turkey and the depths in this diversity, it will only be possible for one person to receive this many votes with the help of pluralist support. We can call

this the pluralism in plurality. Pluralist structures are the most important assurance of democracy. In this respect, the numerical majority of the referendum is a ratio that guarantees pluralist support. This also shows the inclusivist characteristic of the new system. As a result, this amendment that has initiated a reform process is a step that forms the legal framework of an inclusive Turkish Nation approach that regards all identities, values and lifestyles as equal and guaranteed. In this context, since the change in the

election system will guarantee the representation of diversity, it will also activate the opportunities that will meet the political equalization needs of all sects.

### ***Amendments to the System of Elections***

Fairness in representation and stability in administration were the founding principles of the previous parliament. Stability in administration exists so that a government can be formed from the parliament. A ten percent election threshold was

**Table of Comparison**

<b>Single Person Government</b>	<b>One-Man Regime</b>
The name of the government model in democratic presidential systems.	The name given to power in an authoritarian and totalitarian systems.
Is directly formed by the people by electing one of multiple candidates. In cases where a single candidate remains in the second tour, it is formed via referendum. It is changed with public elections.	Does not depend on elections, it emerges according to political and economic conditions. It is not tied to any government model. Hitler was a one-man regime in parliamentary government mode, Stalin in a single-party regime and Pinochet in a presidential government model.
It is subject to the supervision of the parliament, the judiciary, democratic public opinion, democratic political opposition and the public.	It is not subject to any supervision.
Power is conferred as a political and legal status. The authorities are bestowed on the status, not on the person. An individual elected for this status uses his/her authority within the framework of rules and institutional structures designated in the constitutional plane. The individual performs activities in a platform of law.	Power is conferred not by status, but by the will of a natural person. The authorities are not bestowed on the status but on an actual person. The individual performs arbitrary actions outside of the realm of law.
Individuals whose assignment procedures and principles regulated by law are delegated perform their duties based on a common work principle.	The individual performs activities based on no legal procedures, assigns people and operates institutions according to will.
Political hierarchy does not exist among individuals but among statuses that are designated by law.	Political hierarchy does not exist among statuses but among individuals.
The approach to administration is not based on managing individuals but managing tasks and operations, i.e. the administration of the process.	The approach to administration is not based on managing tasks but individuals.

designated to ensure stability in administration but this was not successful in solving problems. In all the elections from the time the Özal government came to power alone until 2002, the parliament has always been fragmented, despite the 10 percent election threshold. The public will now ensure stability by electing the government at the ballot box since the burden on the people has now been removed for ensuring stability in administration. The government will be formed directly either in the first or the second round of elections. When the public forms the government directly, the problem of stability will have been solved. The founding principle of the parliament will now be fairness in representation. When there is fairness in representation, the ten percent election threshold will not be needed. In this case, the diversity of representation comes to the fore. Needs such as ensuring fairness of representation in numerical minimalism as well as representation of diversity and pluralism will be important.

### ***Comparison of Single-Person Government and One-Man Regime***

Democratic presidential systems are one single-person governments in political terms. In technical terms, they are team governments. The reason why they are single-person governments is related to the fact that the government is formed with the election of one of the presidential candidates. A one-man regime, on the other hand, is the name of the power in authoritarian and totalitarian systems. The government model has no

relationships to establish one-man regimes. Claims to the effect that a one-man regime will emerge in a democratic system do not correspond with any sociological or political reality. A presidential model of government is a model open to supervision by both the parliament and the judiciary.

### **Turkish Democracy in Relation to Global Capitalism**

Based on the strong democratic culture of Turkish society, it can be foreseen that the presidential system of government, which is a significant phase in Turkey's democracy movement, marks an important democracy experience in the world. As it is known, western democracies were built on affluent societies with the help of countries under capital control. Hence, the West's culture of democracy was developed based on economic processes. In other words, a vulnerable approach to democracy has been formed, and erosions of the welfare society will result in tendencies to regress in democracy and democratic culture. It is as if the democratic polish is worn off displaying the racism, xenophobia and fascistic practices underneath.<sup>2</sup>

However, the democratization process in Turkey has developed and is still developing as a result of society's struggle to freely express itself with all its values and identities. Since there was not enough capital accumulation during the establishment of the Turkish Republic, the state was structured on bureaucracy

rather than a capital-driven, owning class. Capitalism in Turkey was operationalized through the rich people in the government. Before the 1980's, policies on tariff and import substitution were designed for this purpose. Rich individuals in the government were not able to obtain state control; they worked under the protective umbrella of the state by cooperating with the political and administrative bureaucracy and used state resources. International expansion processes in the economy that started with Özal helped form objective capital accumulation. However, the relationship between domestic capital groups and the government has not turned into a control relationship either. The efforts to control the Turkish Government through global finance capital institutions were terminated in the governments led by Erdoğan. When the debts were paid off, the IMF and World Bank lost their effectiveness in Turkey.

Efforts to guide Turkey through credit rating agencies were not successful either, since these were not the mechanisms that could control the government. Now in Turkey, there is a relationship based not on control but on cooperation between the government and both international capital and domestic capital. Hence, the political system in Turkey has the opportunity to develop democracy without being dependent on economic processes.

While democracy is empowered in this manner, opportunities to develop a welfare economy will also increase. On the other hand, if the ero-

**The only politics that can be regarded as legitimate in Turkey from now are those directly based on the public, i.e. those that transform the demands and needs of the public into political action**

sion of welfare society continues in the west, it is possible for the west to make more concessions in the realm of democracy. The developments observed in the west today point to this fact. Since Turkey has developed its culture of democracy not on economic welfare but on the expression of society, it has a stronger disposition in terms of democracy culture.

The main reason for this is the fact that the basic conflict in Turkey is not based on class but on the conflicts between the state and society. Therefore, the priority of the society in Turkey has been the free expression of belief, identity, and cultural values rather than economic welfare. The struggle for democracy was developed in this channel. The economic statuses of the middle class that developed in the 1980s were not the main basis for the struggle of democracy but its supporter. Following the National Democratic Public Revolution of July 15-16, the will of democracy in Turkish society has strengthened even more. Therefore, Turkish democracy has obtained the strength to be least affected by economic processes.

## Conclusion

The extremely significant changes made by President Erdoğan in Turkey's political leadership style have profoundly influenced the empowerment of Turkish democracy. President Erdoğan has ensured radical changes in Turkey's political style by adopting sociological politics in Turkey instead of representative politics. Also, he has radically changed Turkey's leadership typology, since he acted as the voice and even an organ of sociology he opted for in the place of representative leadership.<sup>3</sup> As a positive argument, we can claim that Erdoğan's form of leadership is direct/organic leadership. From now on, no political actors in Turkey have a chance to achieve major successes without practicing sociological politics and engaging in organic leadership practices. The other dimension that empowers Turkish democracy is the change in the style of politics and leadership practices. The only politics that can be regarded as legitimate in Turkey from now are those directly based on the public, i.e. those that transform the de-

mands and needs of the public into political action. The biggest power of democracies is to have the opportunity to do politics with a political system that can allow the adoption of the national sovereignty principle with the public will. Hence, Turkey's transition to a presidential system of government marks the beginning of a reform process that will strengthen the relationship between the public and the government and generate a new phase in the evolution of Turkey's democracy. While classical democracies are experiencing crises, Turkey is positioning itself to develop a form of democracy that will continue to rise. ■

## Endonotes

1. Since the cabinet members are not picked from the members of the parliament any more, I consider the members of the cabinet as technical persons, and hence the team of the president as technical government. That is, the only constitutional source of the executive branch is the presidency, not the cabinet.
2. İdris Küçükömer, *Batılılaşma ve Düzenin Yabancılaşması*, (İstanbul: Profil Yayıncılık, 2013), pp. 22-38.
3. Nur Vergin, *Siyasetin Sosyolojisi*, (İstanbul: Doğan Kitap, 2015), pp. 63-80.